

IN THE MATTER OF ARBITRATION)

Between)

INDEPENDENT SCHOOL DISTRICT)

197, Employer)

and)

SERVICE EMPLOYEES INTER-)

NATIONAL UNION, LOCAL)

284, Union)

OPINION AND AWARD

BMS Case No. 07-PA-0769

Appearances:

For the Employer: Gloria Blaine Olsen, Kennedy & Graven, Minneapolis, MN

For the Union: Pamela Twiss, Chief of Staff, Local 284

Procedures:

The undersigned was chosen as Arbitrator in the present Matter through the procedures of the Minnesota Bureau of Mediation Services. A Hearing was held in the present matter at the offices of the School District in Mendota Heights, MN on May 24, 2007, commencing at 8 a.m. With the simultaneous exchange of Post-Hearing Briefs on June 15, 2007, the Record in this matter was closed.

Core Facts:

The Employer is a school district serving seven suburban cities near St. Paul, Minnesota.

As a part of its operations, it runs five elementary schools. At these schools, for children in grades K through 4, it operates, as part of its Community Education program, a School-Age Child Care (SAC) program, which provides pre-school and/or after-school care as a service to parents. Parents pay for this service, so the cost doesn't come out of the District's General Fund.

As a part of SAC, children are fed breakfast and/or an afternoon snack. Further, Minnesota statutes provide that (beyond some threshold number) children eligible for free or reduced price lunch under Federal law must be provided breakfast, for which the state then reimburses the District.

The Union is a state-wide local of school service employees, affiliated with the Service Employees International Union. It represents the food service employees of the District and has negotiated a collective bargaining agreement with the District. At the time of the Hearing, that agreement ran from July 1, 2004 through June 30, 2007. The same Local also represents the paraprofessional employees of the District and has negotiated an agreement covering them.

At issue:

Demographics are destiny. The catchment areas for two of the District's five elementary schools do not generate sufficient numbers of free or reduced price lunch students to require a breakfast program for them. As a result, a full breakfast program has not been maintained at those two schools (Mendota and Somerset). Instead, the paraprofessionals who supervise the SAC program students have been assembling breakfast trays comprised mostly of packaged food items which require basically no cooking, although they may be heated to "make them palatable."

(Testimony of Sherry Green, , SAC coordinator 1990-2007, on cross-examination) This arrangement has apparently been in place for a number of years.

Naturally, the Union's take on this practice is rather different. In the words of witness Shane Allers, Executive director of Local 284 since 1985, on direct examination: ".....Food service employees are just asking that food service work be done by food service employees." Estimates of the amount of time involved vary from 30 to 60 minutes (by the Employer) to 1 ½ hours (by the Union) on a daily basis. Grievant Cyd Vanderbeek noted the potential importance of even small increases in hours—of 51 total food service employees, 31 have no benefits; a 30 minute daily increase could make 11 of those eligible for benefits, while a one hour increase would propel 28 into benefits. Yet, at the same time, witnesses freely conceded that the District could comply with an Arbitrator's decision favoring the Union's position by simply creating two ½ to 1 ½ hour jobs, so that Ms. Vanderbeek's numbers would change to 53 total employees, 33 without benefits.

At two points in the Hearing, attention was focused on the costs of such a decision. Employer witness Jeff Wolfer, supervisor of Food Services since 1998, estimated that performing the work with a kitchen aide (the lowest paid food service classification) and assuming only a half-hour at each of the two schools, we do the arithmetic as follows: \$13.06 per hour times 1.3 (to cover benefits) times 170 days in the school year = \$2686. "So, it's not a lot of cost," concluded witness Wolfer. (The correct figure is \$2886, still "not a lot of cost.") But, as District Human Resources director MaryAnn Thomas pointed out in her subsequent testimony, this is not the right calculation. Addition of 3 ½ to 4 hours to two employees' working time

could make the two eligible for “*all* benefits.” With medical insurance running some \$8,000 per year, we need to add \$16,000 to the \$3,000 estimated for additional wages and we get a total cost of “\$19,000 plus dental plus life insurance plus holidays plus bereavement plus etcetera.”

(Direct examination of MaryAnn Thomas) So, it becomes highly probable that a financially stressed School District would indeed follow the two very part-time jobs route outlined earlier.

Whether they could fill those 2.5 to 7.5 hours a week (using the range from the employer’s lowest to the Union’s highest estimate) is an open question: currently there are no food service staff who work less than 2 hours a day or 10 hours a week. (Union Exhibit M)

Was the grievance timely?

The Employer objects to the Grievance as untimely filed according to the collective bargaining agreement: Article XVII, section 4, subdivision 1 provides for a time limit of fifteen days between occurrence of a grievance and presentation of a written grievance to the Director of Business Services of the District. : “Failure to file within the fifteen day period shall constitute a waiver of the grievance.” The application of this rule is substantially clarified by the provisions of Article XVII, section 5, step 1: “The grievance shall be orally presented to the Child Nutrition Supervisor within five days of its occurrence or within five days from the date the employee should have known of the alleged violation.”

The Union contends that it was only during a meeting with management on October 12, 2006, that it became aware of the facts as outlined above: that paraprofessionals were serving breakfast to children at Mendota and Somerset elementary schools. The Employer’s vacancy

announcements for instructional assistants/paraprofessional dated May 12, 1997 (District Exh. 3 and 4) are not completely dispositive of the issue—many of these paraprofessionals either had (per Sherry Green’s testimony) or were required (District Exhibit 4) to have a B.A.. Food service staff may simply have paid no attention to vacancies for which they were not qualified. But, surely, one of the advantages of being affiliated with a union with specialized support to a variety of job groupings (like Local 284) ought to be an awareness of job content advertised in vacancy announcements.

Moreover, it was established in testimony and exhibits that SAC paraprofessionals ordered food through the food service program’s Linda Ramisch (a steward) (Testimony of Sherry Green, Union Exhibit H) and that food service staff objected when some paraprofessionals asked them to wipe down tables (at schools with the full breakfast program) (referred to in Jt. Ex. 2, page 2, point 4).

But, the most illuminating insight comes from the testimony of Jeff Wolfer, the long time Food Service supervisor, on direct examination:

Q: Any complaints about SAC paraprofessionals serving students from Food Service employees?

A: Maybe if they took an extra shelf [in a refrigerator].....

The Union “should have known” about the alleged violation long before October 12, 2006. In the words of witness Sherry Green: “We share refrigerators and equipment...this has never been a secret.”

The Employer has got this right: any grievance over the food service duties intertwined with child care duties in the positions of instructional assistants/paraprofessionals should have been filed a long time ago.

AWARD

For the reasons given, the Grievance is denied in its entirety.

Given at Minneapolis, Minnesota this sixth day of July 2007.

James G. Scoville, Arbitrator.